

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-RJK

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

_____ /

**AGREED MOTION FOR EXTENSION OF TIME
AND TO EXCEED PAGE LIMITATIONS**

Plaintiff CSX Transportation, Inc. (“CSX”), by counsel, hereby moves for an extension of time to submit a consolidated opposition brief and to establish a briefing schedule pursuant to Federal Rule of Civil Procedure 16(b)(4). Specifically, CSX moves for an extension of time to file a consolidated opposition brief exceeding the page limitations contained in Local Rule 7(F)(3), responding to Defendants’ *Daubert* Motions seeking to exclude the opinions and testimony of Dr. Howard P. Marvel. *See* ECF Nos. 465, 473. Defendants Norfolk Southern Railway Company (“NS”) and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) consent to this motion if they are granted an extension for their reply briefs. In support of this Motion, CSX states:

1. Local Rule 7(F)(1) states that “[u]nless otherwise directed by the Court, the opposing party shall file a response brief . . . within fourteen (14) calendar days after service and the moving party may file a reply brief within six (6) days after service of the opposing party’s response brief.”

2. Local Rule 7(F)(3) states that “[e]xcept for good cause shown in advance of filing,” opening and responsive briefs shall not exceed thirty (30) pages in length, and rebuttal briefs shall not exceed twenty (20) pages.

3. On October 13, 2022, NS filed a Motion to Exclude Opinions of Professor Howard P. Marvel. *See* ECF No. 465. On October 14, 2022, NPBL filed a Motion in Limine to Exclude Testimony from Plaintiff’s Expert, Howard Marvel. *See* ECF No. 473.

4. The Parties now jointly request the Court grant short extensions to the briefing schedule regarding Defendants’ *Daubert* Motions. The Parties ask that CSX be permitted to file its opposition on November 4, 2022, and that Defendants be permitted to file their reply briefs on November 14, 2022. These short enlargements of time will allow the Parties to comprehensively address the facts and legal arguments in Defendants’ *Daubert* Motions. In addition, certain CSX attorneys working on the opposition will be traveling out of state on business for a substantial period of the response time. CSX also asks that rather than file two separate responses that could total sixty (60) pages, it instead be permitted to file a consolidated response to Defendants’ Motions, not to exceed fifty (50) pages. CSX believes that a consolidated response will be most efficient for the Court and the parties. Defendants agree to this request.

5. These requests will not materially delay resolution of the *Daubert* Motions, this case or otherwise prejudice any party. Counsel for CSX has conferred with counsel for NS and NPBL, who agree and consent to this Motion and the relief requested. Also, the brief extensions of time will not affect the trial date, as these Motions will be fully briefed by November 14, 2022, over two months before trial begins.

WHEREFORE, CSX, by counsel, requests that this Court grant this Agreed Motion for an Extension of Time and to Exceed Page Limitations and enter the Parties’ Proposed Agreed Order,

attached as Exhibit 1.

Respectfully submitted this 19th day of October, 2022.

CSX TRANSPORTATION, INC.

By its attorneys,

/s/ Robert W. McFarland

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CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2022, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system.

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